

## **CHAPTER 29-30.3**

### **UNIFORM EXTRADITION AND RENDITION ACT**

**29-30.3-01. (1-101) Definitions.** As used in this chapter:

1. "Arrest warrant" means any document that authorizes a peace officer to take custody of a person.
2. "Certified copy" means a copy of a document accompanied by a statement of a custodian authorized by the law of a state to maintain the document that the copy is a complete and true copy of an official record filed and maintained in a public office.
3. "Demanded person" means a person whose return to a demanding state is sought from another state by extradition under sections 29-30.3-08 through 29-30.3-14.
4. "Demanding state" means a state that is seeking the return of a person from another state through the process of extradition under sections 29-30.3-08 through 29-30.3-14.
5. "Executive authority" means the chief executive in a state other than this state, any person performing the functions of chief executive, or a representative designated by the chief executive.
6. "Governor" means the governor of this state, any person performing the functions of governor, or a representative designated by the governor.
7. "Issuing authority" means any person who may issue or authorize the issuance of an arrest warrant.
8. "Requested person" means a person whose return to a requesting state is sought from another state by rendition under sections 29-30.3-15 through 29-30.3-20.
9. "Requesting state" means a state that is seeking the return of a person from another state through the process of rendition under sections 29-30.3-15 through 29-30.3-20.

**29-30.3-02. (1-102) Conditions of release.** The law of pretrial release of this state governs release of a person pursuant to sections 29-30.3-06, 29-30.3-13, 29-30.3-19, and 29-30.3-21.

**29-30.3-03. (1-103) Nonwaiver by this state.** This chapter and proceedings under it are not exclusive and do not affect the authority of this state to:

1. Try a demanded or requested person for a crime committed within this state;
2. Take custody of a demanded or requested person by extradition or rendition proceedings for the purpose of trial, sentence, or punishment for a crime committed within this state;
3. Take custody of a person under other provisions of law, including interstate agreements; or
4. Release a person from custody upon any valid conditions.

**29-30.3-04. (2-101) Arrest without warrant.**

1. A peace officer may arrest a person without an arrest warrant upon probable cause to believe that the person is the subject of another state's arrest warrant issued for:

- a. Commission of a crime punishable by death or imprisonment for a term exceeding one year;
  - b. Escape from confinement; or
  - c. Violation of any term of bail, probation, parole, or an order arising out of a criminal proceeding.
2. The arrested person must be brought before the nearest available magistrate.
3. The magistrate shall issue an order to continue custody or other process to assure the appearance of the person, if testimony or affidavit shows probable cause to believe the person is the subject of another state's arrest warrant issued for:
  - a. The commission of a crime punishable by death or imprisonment for a term exceeding one year;
  - b. Escape from confinement; or
  - c. Violation of any term of bail, probation, parole, or an order arising out of a criminal proceeding.

**29-30.3-05. (2-102) Issuance of process or arrest warrant prior to receipt of demand or request.**

1. A magistrate for the county where arrest is sought shall authorize the issuance of an arrest warrant or other process to obtain the appearance of a person, if testimony or affidavit shows probable cause to believe:
  - a. The person is in this state; and
  - b. The person is the subject of another state's arrest warrant issued for:
    - (1) The commission of a crime punishable by death or imprisonment for a term exceeding one year;
    - (2) Escape from confinement; or
    - (3) Violation of any term of bail, probation, parole, or order arising out of a criminal proceeding.
2. Other process to obtain the appearance of a person must require the appearance before a magistrate.
3. The arrest warrant must require that the person be brought forthwith before a magistrate.

**29-30.3-06. (2-103) Appearance prior to receipt of demand or request.**

1. The magistrate shall inform the person appearing pursuant to section 29-30.3-04 or 29-30.3-05 of:
  - a. The name of the other state that has subjected the person to an arrest warrant;
  - b. The basis for the arrest warrant in the other state;
  - c. The right to assistance of counsel; and

- d. The right to require a judicial hearing under this chapter before transfer of custody to the other state.
2. After being informed by the magistrate of the effect of a waiver, the arrested person may waive the right to require a judicial hearing under this chapter and consent to return to the other state by executing a written waiver in the presence of the magistrate. If the waiver is executed, the magistrate shall issue an order to transfer custody pursuant to section 29-30.3-21 or, with the consent of the official upon whose application the arrest warrant was issued in the other state, authorize the voluntary return of the person to that state.
3. Unless a waiver is executed pursuant to subsection 2, the magistrate shall:
  - a. Release the person upon conditions that will reasonably assure availability of the person for arrest pursuant to section 29-30.3-12 or 29-30.3-18; or
  - b. Direct a law enforcement officer to maintain custody of the person.

Subject to section 29-30.3-07, the period of conditional release or custody may not exceed thirty days.

**29-30.3-07. (2-104) Extension of time.**

1. If the person is not arrested pursuant to section 29-30.3-12 or 29-30.3-18 within the period specified in the arrest warrant or other process, the magistrate for good cause may issue further orders under subsection 3 of section 29-30.3-06 for additional periods not exceeding a total of sixty days. Further extensions of orders may be requested by the person under subsection 3 of section 29-30.3-06.
2. If the person is not arrested pursuant to section 29-30.3-12 or 29-30.3-18 within the time specified by the magistrate, the person may not be subjected to any further order in this state under subsection 3 of section 29-30.3-06. If the person is subsequently arrested in this state under section 29-30.3-04 or 29-30.3-05 on the basis of the same arrest warrant of the other state, the person may not be subjected to the issuance of orders under subsection 3 of section 29-30.3-06 and must be released from custody. However, the person may be arrested thereafter pursuant to section 29-30.3-12 or 29-30.3-18.

**29-30.3-08. (3-101) Demand for extradition.**

1. The governor may recognize a written demand by an executive authority for the extradition of a person, alleging that the person:
  - a. Is charged with a crime in the demanding state; or
  - b. Having been charged with or convicted of a crime in the demanding state has:
    - (1) Escaped from confinement; or
    - (2) Violated any term of bail, probation, parole, or an order arising out of a criminal proceeding in the demanding state.
2. The governor may demand the extradition of a person from another state in accordance with the Constitution of the United States and may comply with the requirements of the other state for recognition of a demand.

**29-30.3-09. (3-102) Supporting documentation.** A demand for extradition must be accompanied by a certified copy of an arrest warrant and one of the following:

1. A statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that a crime has been committed and the demanded person committed the crime, together with a copy of the provisions of law defining the crime and fixing the penalty therefor.
2. A certified copy of the indictment upon which the arrest warrant is based.
3. A statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that the demanded person has violated any term of bail, probation, or an order arising out of a criminal proceeding.
4. A certified copy of a judgment of conviction or a sentencing order accompanied by a statement by the issuing authority that the demanded person has escaped from confinement or violated any term of parole.

**29-30.3-10. (3-103) Governor's investigation.** The governor may:

1. Investigate the demand for extradition and the circumstances of the demanded person;
2. Request the attorney general or any state's attorney to investigate; or
3. Hold a hearing.

**29-30.3-10.1. Guilt or innocence of accused - When inquiry made.** The guilt or innocence of the accused as to the crime with which the person is charged may not be inquired into by the governor or in any proceeding after a demand for extradition has been presented to the governor or a demand for rendition has been filed with the attorney general, except as it may be involved in identifying the person held as the person charged with the crime.

**29-30.3-11. (3-104) Extradition of persons imprisoned or awaiting trial.**

1. If a demanded person is being prosecuted, is imprisoned, is on parole or probation, or is subject to an order arising out of a criminal proceeding, in this state, the governor may:
  - a. Grant extradition;
  - b. Delay action; or
  - c. Agree with the executive authority of the demanding state to grant extradition upon conditions.
2. The governor may agree with an executive authority of another state for the extradition of a person who is being prosecuted, is imprisoned, is on parole or probation, or is subject to an order arising out of a criminal proceeding, in that state upon conditions prescribed by the agreement.

**29-30.3-12. (3-105) Governor's warrant.**

1. If the governor decides to comply with the demand for extradition, the governor shall issue a warrant for the arrest and extradition of the demanded person. The governor's warrant must recite the name of the state demanding extradition and the crime charged or other basis for the demand.
2. The governor may specify the time and manner in which the warrant is executed.
3. At any time before the transfer of custody of the demanded person to the agent of the demanding state, the governor may recall the warrant or issue another warrant.

4. The warrant must be directed to any law enforcement officer and require compliance with section 29-30.3-13.
5. The law relating to assistance in the execution of other arrest warrants in this state applies to the execution of the governor's warrant.

**29-30.3-13. (3-106) Rights of demanded person.**

1. A person arrested under a governor's warrant must be brought before the nearest available magistrate who shall receive the warrant and inform the person of:
  - a. The name of the state demanding extradition;
  - b. The crime charged or other basis for the demand;
  - c. The right to assistance of counsel; and
  - d. The right to a judicial hearing under section 29-30.3-14.
2. After being informed by the magistrate of the effect of a waiver, the demanded person may waive the right to a judicial hearing and consent to return to the demanding state by executing a written waiver in the presence of the magistrate. If the waiver is executed, the magistrate shall issue an order to transfer custody pursuant to section 29-30.3-21 or, with the consent of the executive authority of the demanding state, authorize the voluntary return of the person.
3. If a hearing is not waived, the magistrate shall hold it within ten days after the appearance. The demanded person and the state's attorney of the county in which the hearing is to be held must be informed of the time and the place of the hearing. The magistrate shall:
  - a. Release the person upon conditions that will reasonably assure availability of the person for the hearing; or
  - b. Direct a law enforcement officer to maintain custody of the person.

**29-30.3-14. (3-107) Judicial extradition hearing.**

1. If the magistrate after hearing finds that the governor has issued a warrant supported by the documentation required by subsection 1 of section 29-30.3-08 and section 29-30.3-09, the magistrate shall issue an order to transfer custody pursuant to section 29-30.3-21 unless the arrested person establishes by clear and convincing evidence that the arrested person is not the demanded person.
2. If the magistrate does not order transfer of custody, the magistrate shall order the arrested person to be released. If the agent of the demanding state has not taken custody within the time specified in the order to transfer custody, the demanded person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant is issued as a result of a new demand for extradition or a new request for rendition.
3. An order to transfer custody is not appealable.
4. An order denying transfer is appealable.

**29-30.3-15. (4-101) Request for rendition.**

1. Subject to subsections 2 and 3, this state may grant a written request by an issuing authority of another state for the rendition of a person in this state.

2. The request must be refused if the requested person is:
  - a. Being prosecuted or is imprisoned in this state for a criminal offense;
  - b. The subject of a pending proceeding in a juvenile court of this state brought for the purpose of adjudicating the person to be a delinquent child;
  - c. In the custody of an agency of this state pursuant to an order of disposition of a juvenile court of this state as a delinquent child; or
  - d. Under the supervision of the juvenile court of this state pursuant to informal adjustment or an order of disposition of the court.
3. The request must allege that the person:
  - a. Is charged with a crime punishable in the requesting state by death or imprisonment for a term exceeding one year in the requesting state; or
  - b. Having been charged with or convicted of a crime in the requesting state, has escaped from confinement or violated any term of bail, probation, parole, or an order arising out of a criminal proceeding in the requesting state.
4. Upon application of the attorney general or a state's attorney, an issuing authority may request rendition of a person from another state and may comply with requirements of that state for the granting of the request. A correction official who is also an issuing authority may request rendition from another state of a person described in subdivision b of subsection 3, and subject to the jurisdiction of the correction official.

**29-30.3-16. (4-102) Supporting documentation.** A request for rendition must be accompanied by a certified copy of the arrest warrant and one of the following:

1. A statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that a crime has been committed and the requested person committed the crime, together with a copy of the provisions of law defining the crime and fixing the penalty therefor.
2. A certified copy of the indictment upon which the arrest warrant is based.
3. A statement by the issuing authority that the warrant was issued after a determination of probable cause to believe that the requested person has violated any term of bail, probation, or other judicial order arising out of a criminal proceeding.
4. A certified copy of a judgment of conviction or a sentencing order accompanied by a statement by the issuing authority that the requested person has escaped from confinement or violated any term of parole.

**29-30.3-17. (4-103) Filing of request.** A request for rendition under section 29-30.3-15 must be filed with the attorney general's office, which office shall forward the request to the proper state's attorney. The governor by written order may terminate the use of rendition at any time before the issuance of an order to transfer custody.

**29-30.3-18. (4-104) Issuance of arrest warrant or process.** Upon receipt of a request under section 29-30.3-17, the prosecuting official shall apply to a magistrate for the issuance of an arrest warrant, or other process, to obtain the appearance of the requested person. If the magistrate finds that the provisions of sections 29-30.3-15 and 29-30.3-16 have been complied with, the magistrate shall issue the warrant or other process. The warrant must require that the

person be brought forthwith before the magistrate. Other process to obtain the appearance of a person must require the appearance before a magistrate.

**29-30.3-19. (4-105) Rights of requested person.**

1. The magistrate shall inform the person appearing pursuant to section 29-30.3-18 of:
  - a. The name of the state requesting rendition;
  - b. The basis for the arrest warrant in the other state;
  - c. The right to assistance of counsel; and
  - d. The right to require a judicial hearing pursuant to section 29-30.3-20.
2. After being informed by the magistrate of the effect of a waiver, the requested person may waive the right to a judicial hearing and consent to return to the requesting state by executing a written waiver in the presence of the magistrate. If the waiver is executed, the magistrate shall issue an order to transfer custody pursuant to section 29-30.3-21 or with consent of the official upon whose application the request was issued authorize the voluntary return of the person.
3. If a hearing is not waived, the magistrate shall hold it within ten days after the appearance. The requested person and the state's attorney of the county in which the hearing is to be held must be informed of the time and place of the hearing. The magistrate shall:
  - a. Release the person upon conditions that will reasonably assure availability of the person for the hearing; or
  - b. Direct a law enforcement officer to maintain custody of the person.

**29-30.3-20. (4-106) Judicial rendition hearing.**

1. If the magistrate after hearing finds that sections 29-30.3-15 and 29-30.3-16 have been complied with, the magistrate shall issue an order to transfer custody pursuant to section 29-30.3-21 unless the arrested person establishes by clear and convincing evidence that arrested person is not the requested person.
2. If the magistrate does not order transfer of custody, the magistrate shall order the arrested person to be released. If the agent of the requesting state has not taken custody within the time specified in the order to transfer custody, the requested person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant is issued as a result of a new demand for extradition or a new request for rendition.
3. An order to transfer custody is not appealable.
4. An order denying transfer is appealable.

**29-30.3-21. (5-101) Order to transfer custody.**

1. Except as provided in subsection 2, a judicial order to transfer custody issued pursuant to section 29-30.3-06, 29-30.3-13, 29-30.3-14, 29-30.3-19, or 29-30.3-20 must direct a law enforcement officer to take or retain custody of the person until an agent of the other state is available to take custody. If the agent of the other state has not taken custody within ten days, the magistrate may:

- a. Order the release of the person upon conditions that will assure the person's availability on a specified date within thirty days; or
  - b. Extend the original order for an additional ten days upon good cause shown for the failure of an agent of the other state to take custody.
2. If the agent of the other state has not taken custody within the time specified in the order, the person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant or other process to obtain appearance of a person is issued as a result of a new demand for extradition or a new request for rendition.
3. The magistrate in the order may authorize the voluntary return of the person with consent of the executive authority or with the consent of the official upon whose application the request for rendition was made.

**29-30.3-22. (5-102) Confinement.** An agent who has custody of a person pursuant to an order to transfer custody issued in any state may request confinement of the person in any detention facility in this state while transporting the person pursuant to the order. Upon production of proper identification of the agent and a copy of the order, the detention facility shall confine the person for that agent. The person is not entitled to another extradition or rendition proceeding in this state.

**29-30.3-23. (5-103) Cost of return.** Unless the states otherwise agree, the state to which the person is being returned shall pay the cost of returning the person incurred after transfer of custody to its agent.

**29-30.3-24. (5-104) Applicability of other law.**

1. A person returned to this state is subject to the law of this state as well as the provisions of law that constituted the basis for the return.
2. This chapter does not limit the powers, rights, or duties of the officials of a demanding or requesting state or of this state.

**29-30.3-25. (5-105) Payment of transportation and subsistence costs.** If a person returned to this state is found not to have violated the law that constituted the basis for the return, the magistrate may order the county or state to pay the person the cost of transportation and subsistence to:

1. The place of the person's initial arrest; or
2. The person's residence.

**29-30.3-26. Payment of expenses.** When the charged offense is a felony, the expenses of returning the demanded person to this state must be paid out of the state treasury, on the certificate of the governor and warrant of the county auditor and in all other cases they must be paid out of the county treasury in the county in which the crime is alleged to have been committed. The expenses are the fees paid to the officers of the state under sections 44-08-04 and 54-06-09.